

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 6, 2009 Session

**HARRY ASKEY, ET AL. v. MAURY COUNTY BOARD OF ZONING
APPEALS, AN ADMINISTRATIVE BODY FORMED UNDER THE
LAWS OF THE STATE OF TENNESSEE AND MAURY COUNTY,
TENNESSEE**

**Appeal from the Chancery Court for Maury County
No. 07-506 Jim T. Hamilton, Judge**

No. M2008-00098-COA-R3-CV - Filed March 30, 2009

A local zoning board found that use of a pasture as a private airstrip violated the applicable zoning restrictions. In an appeal by the landowner, the trial court found the board erred since the permitted use “recreational facility” applied to a private airstrip. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and ANDY D. BENNETT, JJ., joined.

Jeffrey M. Beemer, Kerry L. Masters, Nashville, Tennessee, for the appellants, Maury County Board of Zoning Appeals, an administrative body formed under the laws of the State of Tennessee and Maury County, Tennessee.

S. Jason Whatley, Columbia, Tennessee, for the appellees, Harry Askey and wife, Edna Jane Askey.

OPINION

This appeal concerns whether the local zoning board erred when it found that applicable zoning regulations prohibited use of farm pasture land as a private airstrip.

The material facts are not in dispute. Harry and Edna Askey live on their farm in Maury County. Beginning in the 1990s, the Askeys built a grass airstrip on their farm which they used for Mr. Askey’s small plane. The Askeys and their friends used this airstrip for personal enjoyment purposes exclusively.

On June 23, 2006, the Askeys received a letter from the Director of the Maury County Building and Zoning Office (“Director”) which informed them that use of the farm property as an airstrip violated the Maury County Zoning Resolution. Apparently, the Director had received a complaint. The Askeys were told to immediately stop use of their airstrip.

The zoning regulation at issue provides that only specifically permitted uses are allowed:

5.042-A-2 Rural Residential District

- a. District Description: This district is intended to be utilized in areas where, due to remoteness, impermeability or shallowness of soils, the absence of the necessary urban services, or the continuation of farming or agricultural activities, development of a suburban density is undesirable or unfeasible. Although the A-2 District is primarily a rural district, it also provides for low-density residential development with lot sizes for single-family dwellings being less restrictive than those of the A-1, Agriculture-Forestry District. In addition, a primary objective of the A-2 District is to prevent undesirable urban sprawl and to exclude land uses which demand a level of urban services which are impossible or uneconomical to provide. The following regulations shall apply in the A-2, Rural Residential District, as defined on the Zoning Map of Maury County, Tennessee.
- b. Uses Permitted: In the A-2, Rural Residential District, the following uses and their accessory uses are permitted:
 - 1. Agricultural and forestry uses and their accessory structures as defined in ARTICLE II.
 - 2. Detached single-family and duplex dwellings, and mobile homes.
 - 3. Agricultural processing including cotton ginning and compressing, corn shelling, hay baling and threshing services.
 - 4. Animal husbandry services including veterinarian services, animal hospital services and poultry hatchery services.
 - 5. Forestry activities and related services.
 - 6. Fisheries and related services.
 - 7. Informational signs and billboards as regulated in ARTICLE IV, Section 4.090.
 - 8. Utility facilities necessary for the provision of services (pursuant to Section 4.130).
 - 9. Recreational facilities.
 - 10. Medical facilities, including doctors and dental offices.
 - 11. Schools, libraries, and fire stations.
 - 12. Family Day Care Home as an allowable “Customary Home Occupation.”
 - 13. Customary Home Occupation as regulated in ARTICLE IV, Section 4.040.

c. Uses Permitted as Special Exceptions: In the A-2, Rural Residential District, the following uses and their accessory uses may be permitted as special exceptions after review and approval in accordance with ARTICLE VIII, Section 8.080.

1. Churches or other places of assembly.
2. Riding stables and kennels.
3. Marinas.
4. Travel trailer parks.
5. Doctors and dental offices.
6. Schools, colleges, and libraries.
7. Neighborhood shopping facilities provided the total floor space devoted to retail sales does not exceed four thousand (4,000) square feet for each such establishment.
8. Recreational facilities other than those permitted.
9. Governmental buildings and community centers.
10. Cemeteries.
11. Communication services and communication equipment installation.
12. Group Day Care Home.

d. Uses Prohibited: In the A-2, Rural Residential District, all uses except those uses or their accessory uses specifically permitted or permitted upon approval as a special exception by the Board are prohibited.

Basically, Section 5.042 provides that all uses are prohibited except those permitted uses expressly listed in subsections (b) and (c).

The Askeys' initial response to the June 2006 letter was to ask the Maury County Board of Zoning Appeals ("Board") to rezone their property so that their farm could be used as an airstrip within the Maury County's zoning regulations. This request was denied by the Board following an August 9, 2006 hearing.¹

When the rezoning effort was unsuccessful, the Askeys then appealed the June 23, 2006 decision of the Director to the Board. At an August 8, 2007 hearing, the Board denied the Askeys' appeal.

Thereafter, the Askeys then filed this action seeking a writ of certiorari to review the Board's August 2007 decision upholding the Director's decision that A-2 zoning prohibits private airstrips. Following a December 2007 hearing, the Chancery Court found that use of the Askeys' pasture as

¹ Following this decision by the Board, the Askeys sued Maury County in Circuit Court alleging, among other things, that the Askeys had relied on representations by zoning officials that their airstrip was a permitted use. That suit is not the subject of this appeal.

a private airstrip did not violate the A-2 zoning designation.² The trial court noted that the permitted “recreational facilities” use was not defined but “recreational use” is defined in Section 5.042 b. 9 in the Zoning Resolution as:

A park: a facility designed and intended for leisure time pursuits such as picnicking, boating, swimming, hiking and open space utilized for organized games. This does not include commercial facilities such as movie theaters or auditoriums.

The court found the Zoning Resolution is “too broad and poorly written” and that the Askeys’ use of the airstrip was a “leisure time pursuit.” Consequently, the trial court found the Board erred in its decision to uphold the Director’s June 2006 interpretation of Section 5.042 of the Zoning Regulation and that the Zoning Resolution does not prohibit the use of the Askeys’ A-Z zoned farm “as a grass airstrip for their private airplane for recreational use.”³

I. ANALYSIS

The rules and principles that apply to construing statutes are likewise applied when construing zoning ordinances. *Moore & Assoc., Inc. v. Cobb*, 124 S.W.3d 131, 133 (Tenn. Ct. App. 2003) (citing *Lions Head Homeowners' Ass'n v. Metropolitan Bd. of Zoning Appeals*, 968 S.W.2d 296, 301 (Tenn. Ct. App. 1997)).

The construction or interpretation of a statute is a question of law. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 924 (Tenn. 1998). Our review of a trial court's determinations on issues of law is *de novo*, with no presumption of correctness. *Frye v. Blue Ridge Neuroscience Center, P.C.*, 70 S.W.3d 710, 713 (Tenn. 2002); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn.2000); *McGee v. Jacobs*, 236 S.W.3d 162, 164 (Tenn. Ct. App. 2007). Our role is to ascertain and give effect to legislative intent, finding that intent, whenever possible, in the natural and ordinary meaning of the words used in the statute. *Myint*, 970 S.W.2d at 924.

The primary rule of statutory construction is “to ascertain and give effect to the intention and purpose of the legislature.” *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000); *Lee v. Franklin Special School Dist.*, 237 S.W.3d 322, 332 (Tenn. Ct. App. 2007). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. *Lee*, 237 S.W.3d at 332. We must examine any provision within the context of the

²The record made before the Board was made a part of these proceedings. The Board’s decision, however, was not. While the Board’s decision was not made a part of this record, both parties stipulated at oral argument that the Board affirmed the Director’s decision on the merits that an airstrip was not a permitted use for property zoned A-2.

³The trial court also discussed reliance by the Askeys on representations by county officials about permitted uses. Since the matter before the trial court was review of an administrative decision by a local body interpreting its zoning regulations, the issue of reliance and its effect was not before the trial court. Consequently, we find that the court’s discussion of reliance is, in effect, dicta by the trial court as it is not relevant to construction of the regulations at issue.

entire statute and in light of its over-arching purpose and the goals it serves. *Lee*, 237 S.W.3d at 332; *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read “without any forced or subtle construction which would extend or limit its meaning.” *Bryant v. Baptist Health System*, 213 S.W.3d 743, 749 (Tenn. 2006) (citing *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn.1991)).

We affirm the trial court’s decision that use of the Askeys’ pasture for a private recreational enjoyment as an airstrip is not prohibited by the A-2 zoning.

The A-2 zoning regulation by its terms allows the use. The A-2 zoning regulation allows use of the property for “recreational facilities” in Section 5.042(b)(9). It is not disputed that the Askeys use the airstrip for purely personal pursuits. The trial court noted that “recreational facilities” was not defined and looked to the definition of “recreational use” in Section 5.042 b. 9 which speaks in terms of a “facility” which is “intended for leisure time pursuits.” While this definition adds very little substantive meaning, it does not detract from, but adds to, the conclusion that the Askeys’ airstrip is a recreational facility. When the language of an ordinance is clear, the courts will enforce the ordinance as written. *421 Corporation v. Metropolitan Government of Nashville and Davidson County*, 36 S.W.3d 469, 475 (Tenn. Ct. App. 2000). Consequently, based on the plain meaning of the words used in the ordinance, the Askeys’ use is permitted.⁴

In addition to the rules of statutory construction applicable to ordinances, there are also rules of construction that apply to zoning ordinances in particular. Courts must construe zoning ordinances “with some deference toward a property owner’s right to the free use of his or her property.” *Lion’s Head*, 968 S.W.2d at 301. This Court will seek to interpret a zoning ordinance in a way that is “most consistent with the ordinance’s general purposes,” but any ambiguity will be resolved “in favor of the property owner’s right to the unrestricted use of his or her property.” *421 Corporation*, 36 S.W.3d at 475.

While the Askeys’ use is a “recreational facility” as used in the ordinance, we also note the ordinance has a rather glaring ambiguity that would be resolved in the Askeys’ favor. As discussed earlier, “recreational facilities” is a permitted use for property zoned A-2 under Section 5.042(b)(9). In that same ordinance, “recreational facilities other than those permitted” under Section 5.042(c)(8) requires a special exception. There is no distinction between recreational facilities that are permitted and those that require a special exception. This leads to the conclusion that what is meant by the term “recreational facilities” is not particularly exact, thus creating an ambiguity as to its very meaning which must be construed in the Askeys’ favor.

⁴The Board argues that reference to “airport” as a permissible use exception elsewhere in the regulations is relevant. The parties cite to various possible definitions of “airport” and argue the relevance of its deletion by amendment. We do not believe the inclusion of “airport” in another part of the ordinance is relevant.

The trial court is affirmed. Costs of this appeal are taxed to the Maury County Board of Zoning Appeals.

PATRICIA J. COTTRELL, P.J., M.S.